

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

ORBIT IRRIGATION PRODUCTS, INC.,

Plaintiff,

vs.

SUNHILLS INTERNATIONAL, LLC, et al.,

Defendants.

MEMORANDUM DECISION

AND ORDER

Case No. 1:10-cv-113

Defendants Sunhills International, LLC, Janice Capener, Dan Capener, and Rong Peng move the court (Dkt. No. 146) to consolidate the above-captioned matter with a case currently pending before the Honorable Brooke C. Wells. *See Orbit Irrigation Products, Inc. v. Capener*, Case No. 1:13-cv-55. This Motion is currently unopposed, and Plaintiff Orbit Irrigation Products, Inc. (Orbit) moves the court (Dkt. No. 152) to extend the amount of time that Orbit may respond to the Defendants' Motion until Judge Wells has resolved a pending Motion to Remand in the case that is in front of her. The Defendants oppose Orbit's Motion, arguing that the Motion to Remand is not likely to be granted.


The court is not persuaded by the Defendants' argument. The likelihood that the Motion to Remand will be granted is not a question that is before this court. The Motion to Remand concerns whether the Defendants appropriately filed a counterclaim invoking federal patent law in a state court case that has been pending for some time. Orbit is entitled to a resolution of this question and there is no reason why this issue cannot be fully and fairly litigated in front of Judge

Wells or a District Judge if Judge Wells chooses to reassign the dispositive motion. Once this matter has been resolved, the Defendants may proceed with their Motion to Consolidate.

For these reasons, the court GRANTS Orbit's Motion for an Extension (Dkt. No. 152) and ORDERS Orbit to file its opposition to the Motion to Consolidate within fourteen days after an Order has been issued on the Motion to Remand in Case No. 1:13-cv-55. The Defendants may then have seven days to file their reply. The court declines Orbit's request to award attorneys' fees and costs incurred in the filing of its Motion for an Extension.

SO ORDERED this 6th day of May, 2013.

BY THE COURT:



ROBERT J. SHELBY
United States District Judge